**THE HONOURABLE SRI JUSTICE C.V. RAMULU**

**WRIT PETITION No.26383 OF 2000**

**DATED: 14.11.2007**

Between:

V. Sayanna

.. Petitioner

And

The Industrial Tribunal-cum-Labour Court, Godavarikhani, rep. by its Chairman and another.

.. Respondents

**THE HONOURABLE SRI JUSTICE C.V. RAMULU**

**WRIT PETITION No.26383 OF 2000**

**ORDER:**

This writ petition is directed against the award, dated 25.07.2000, passed in I.D.No.29 of 1999 on the file of the 1st respondent - Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District.

2. Petitioner is the workman and the 2nd respondent is the management. It appears, the petitioner-workman, having applied sick leave for three days from 11.12.1996 to 13.12.1996, went to his native place in Maharashtra, fell sick there, undergone treatment from 14.12.1996 to 08.02.1997 and reported to duty on 10.02.1997 with a medical certificate issued by a private doctor. When he was asked by the management to undergo medical examination, he did not do so and again went to his native place on receipt of a telegram that his wife was not well, without applying for any leave and, thereby, again absented to duties from 11.02.1997 till the date of his dismissal from service i.e. till 30.08.1997.

3. It was the case of the petitioner that when he went to his native place after applying sick leave for three days, he fell sick and, therefore, could not attend to duties after expiry of the sick leave and could report to duty on 10.02.1997 only, but he was not permitted to attend to duties and was directed to undergo medical examination. In

the meanwhile, he received a telegram informing that his wife was not well and, thereupon, he again went to his native place and reported to duty on 06.09.1997, but he was not permitted to join duty and was informed that he was dismissed from service with effect from 30.08.1997. Further, the enquiry conducted was an ex-parte one and the order was also passed ex-parte, without serving any show cause notice and enquiry report on him.

4. The 2nd respondent-management filed a detailed counter before the Labour Court stating that the petitioner-workman, having applied sick leave for three days from 11.12.1996 to 13.12.1996, left the headquarters without giving his address in the native place and produced outstation sick certificate on the day he reported to duty. He was directed to approach the Medical Superintendent, Area Hospital, Ramakrishnapur, for ascertaining his fitness to attend to duties, but he did not attend to medical examination. Therefore, a charge sheet was issued on 21.03.1997 for his habitual absenteeism in the years 1995, 1996 and 1997 and for not attending to medical examination. Further, the petitioner, in the address furnished by him, mentioned the place of Peddaguttapalli of Peddapalli Taluq as his native place, but not Maharashtra state. The charge sheet sent to the petitioner by registered post was returned un-served. Thereupon, the charge sheet enquiry notice was published in Andhra Jyothi Telugu Daily on 19.05.1997 and the enquiry officer conducted the enquiry ex-parte and, since the charge was proved, he was dismissed from service on 30.08.1997.

5. From the above facts, it is clear that the petitioner, after applying sick leave for a period of three days, did not report to duty after expiry of the said sick leave and reported to duty on 10.02.1997, and did not

report before the medical officer, as directed by the authorities, and, thereafter, again absented to duties, without applying for any leave, till the date of his dismissal from service. The explanation offered by the petitioner for his absenteeism is that he fell sick and, in proof of the said cause, he produced a sick certificate issued by a private doctor. But, the same was not accepted by the 2nd respondent-management on the ground that it was an outstation sick certificate and, hence, the petitioner was directed to appear before the medical officer. This fact was admitted by the 2nd respondent in the counter filed by it. Thus, it is clear that the petitioner fell sick. But, when an enquiry was sought to be conducted, it was conducted ex-parte and the petitioner was given no opportunity to participate in the enquiry.

6. Be that as it may, the petitioner had put in about twenty years of service as on the date of his dismissal from service and it was not the case of the management that his past conduct was bad or he was accused of absenteeism earlier. The misconduct alleged to have been committed by the petitioner is that he absented to duties during the years 1996 and 1997. In a case of this nature, where the petitioner had put in about twenty years of service and where there is no complaint that he has committed such misconduct earlier or he has suffered some other punishment earlier for any misconduct, the Labour Court ought to have taken a lenient view against the petitioner, while exercising its powers under Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act'), and ought to have directed reinstatement denying backwages etc. Instead that, the Labour court made a pedantic approach for the first misconduct committed by the petitioner and approved the dismissal order passed by the disciplinary authority, which was an ex-parte order, and thereby failed to exercise its

discretionary power vested under Section 11-A of the Act. Thus, I am of the opinion that the punishment of dismissal from service is shockingly disproportionate to that of the misconduct alleged against the petitioner, who had twenty long years of service, and he is entitled for reinstatement with continuity of service, but without any backwages and other attendant benefits.

7. For the above reasons, the award passed by the Labour Court is set aside and the 2nd respondent-management is directed to reinstate the petitioner-workman into service with continuity of service, but without any backwages and other attendant benefits.

8. The writ petition is allowed to the extent indicated above. No order as to cots.

**C.V.RAMULU, J**

14th November, 2007
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